

Exhibit 13

1 UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF NEW YORK

3 -----
4 **BLACK LOVE RESISTS IN THE RUST, et al.,**
5 **individually and on behalf of a class of**
6 **all others similarly situated,**

7 Plaintiffs,

8 -vs-

1:18-cv-00719-CCR

9 **CITY OF BUFFALO, N.Y., et al.,**

10 Defendants.
11 -----

12 **EXAMINATION BEFORE TRIAL OF JOSEPH GRAMAGLIA**

13 **APPEARING REMOTELY FROM**

14 **ERIE COUNTY, NEW YORK**

15
16 September 22, 2023

17 9:05 a.m. - 5:15 p.m.

18 pursuant to notice
19
20

21 REPORTED BY:

22 Carrie A. Fisher, Notary Public

23 APPEARING REMOTELY FROM ERIE COUNTY, NEW YORK

DEPAOLO CROSBY REPORTING SERVICES, INC.

135 Delaware Avenue, Suite 301, Buffalo, New York 14202
716-853-5544

~~JOSEPH GRAMAGLIA~~

1 services, and the housing officers worked out
2 of a housing station which is the station that
3 I used to work at when I was a housing officer
4 from '94 to '96 and their primary function was
5 to patrol the housing developments and respond
6 to any issues that the BMHA hierarchy --
7 concerns that they had.

8 Q. And as deputy commissioner for operations,
9 were you part of the Housing Unit command
10 structure?

11 A. And forgive me, I don't recall when they were
12 disbanded. I believe that I was at the time.
13 Honestly, I didn't look at the dates again. I
14 believe there was a short time frame I think
15 that I was. So if you happen to know the date
16 that they were disbanded, you'd help me out.

17 Q. Yes. I believe that the Housing Unit was
18 disbanded around June of 2020 or July.

19 A. Okay. Yeah, so I would have --

20 Q. July of 2020.

21 A. So I would have been responsible for them for
22 two years.

23 Q. And so what were your responsibilities with

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1 specifically about Internal Affairs complaints
2 I think that we'll -- we will know that so
3 maybe I can clarify the question.

4 I'm not necessarily -- I mean for this
5 question I'm not speaking about Internal
6 Affairs complaints, but were you aware
7 generally of complaints by the tenants'
8 council and by residents of -- about
9 aggressive policing and unjustified stops by
10 Housing Unit officers?

11 A. I had heard of some but not a lot.

12 Q. And what had you heard?

13 A. Basically in a nutshell what you're saying,
14 nothing of substance.

15 Q. So you think a complaint of aggressive
16 policing or unjustified stops is -- you would
17 characterize that as "nothing of substance"?

18 MS. FREELY: Objection to form.

19 A. That's not what I said at all. What I'm
20 saying is not of substance is I'm not aware of
21 on a broader scale of complaints that had
22 substance. If someone had a complaint, the
23 process is that they would bring that

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1 complaint to Internal Affairs and it would be
2 investigated. There's a difference between
3 somebody generally making a complaint on a
4 general level of there is this occurring as
5 opposed to someone says that I was subjected
6 to this and file a specific complaint.

7 It is -- it's almost impossible to
8 address generalized complaints based on what
9 something that somebody says that they heard.
10 If there's a specific complaint and we were --
11 we always encourage if somebody has a
12 complaint to come into Internal Affairs, make
13 your complaints specific related to you or
14 something you have direct knowledge of and we
15 will investigate that. So I had heard
16 generally of complaints that would be made,
17 again, on a general basis.

18 Q. Okay.

19 A. If there was a specific complaint made, that
20 would come through the Internal Affairs.

21 Q. And had you heard generally complaints that
22 Housing Unit officers engaged in racially
23 discriminatory policing?

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1 MS. FREELY: Objection to form.

2 A. You know, there were some reports in the media
3 of that but, again, I don't recall anything of
4 actual substance that I was directly involved
5 in.

6 Q. Based on the reports in the media that you
7 were aware of, did you ever investigate
8 whether Housing Unit officers were engaging in
9 discriminatory policing?

10 A. The complaints that we would have investigated
11 are complaints that would come into Internal
12 Affairs from a complainant or someone who has
13 direct knowledge of something that occurred.
14 It is very difficult to generally investigate
15 a complaint so -- and at that time I did not
16 have operational control over Internal Affairs
17 to be involved in that. You know, that -- I
18 guess that ground level awareness of anything
19 specific so, you know, when I say that I
20 generally heard of some things in the media,
21 it was not a lot. I heard some reporting.

22 Q. Are you aware that the tenants had repeatedly
23 asked the common council to end the Housing

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1 Unit contract because of discriminatory
2 policing concerns?

3 A. I think I might have seen a report on the
4 media about that.

5 Q. Are you aware that the state attorney general
6 Eric Schneiderman at the time is investigating
7 the Buffalo Police Department's use of traffic
8 enforcement and sweeps inside public housing
9 developments?

10 A. No. Not -- no, I don't recall an
11 investigation of that. I was never brought in
12 for any informational sessions on that so my
13 answer would be no.

14 Q. And just to -- strike that. Strike that.

15 I'm going to, let's see, introduce
16 Gramaglia 1. Okay, and are you -- wait, is
17 this -- are you able to see this?

18 A. I am. I have to get a little closer to try to
19 read it.

20 Q. There we go. Is that better?

21 A. Yes.

22 Q. Okay. This is an email from Matthew Wrona to
23 you. It's dated June 25th, 2018.

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1 handled by Captain Rinaldo who handled the
2 ordering, setting up the infrastructure and
3 then getting the training to our training
4 academy, conducting the training, getting them
5 issued, you know, the docks -- again, part of
6 the infrastructure of the docks within their
7 respective station houses needed dedicated
8 lines, you know, for upload purposes, things
9 of that nature. No, that was not handled by
10 me.

11 Q. And you wrote your master's thesis on
12 body-worn camera programs, right?

13 A. I wrote my master's thesis on officers'
14 perceptions on body-worn cameras.

15 Q. In your thesis you discuss the importance of
16 training to a successful body-worn camera
17 program, right?

18 A. Yes.

19 Q. You wrote: "The most important part of the
20 training is to have a significant amount of
21 time spent on providing instruction on the
22 department policy and ensuring that each
23 department member is well-versed in all

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1 aspects of the policy. This is extremely
2 important because not following department
3 policy could result in departmental charges
4 against a member."

5 MS. FREELY: Objection.

6 Q. Do you still agree with this statement?

7 MS. FREELY: Objection to form.

8 A. I do agree with that, yes.

9 Q. Did the BPD invest a significant amount of
10 time instructing officers on the department's
11 body-worn camera policy?

12 A. I believe we did. We still provide
13 instruction on that. We've done training
14 bulletins, but the initial rollout is that
15 officers would come in for a training. Part
16 of that training is the nomenclature of the
17 body camera itself, how it operates, you know,
18 getting used to its operation and then the
19 policy itself and what that policy was. When
20 the signed agreement came out with the union,
21 we had to retrain the membership on that as
22 well so yes. And every member of the
23 department has access to the policy and the

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1 signed agreement.

2 Q. And I will state for the record I know that we
3 have the policy, but I don't believe that the
4 signed agreement has been produced in
5 discovery in this litigation.

6 Do you think that the officers are now
7 well-versed in the body-worn camera policy?

8 MS. FREELY: Objection to form.

9 A. I believe that they are. I think the union
10 president -- well, I'm not going to say what
11 he thinks but, yes, we have provided ample
12 training and, as I said, there is some
13 retraining that goes on as well.

14 Q. Have you ever brought up departmental charges
15 against officers for failing to adhere to the
16 body-worn camera policy?

17 A. Yes.

18 Q. And how many times have you done that?

19 A. I think less than a hundred or about a
20 hundred. I think it's -- I think the number
21 is under a hundred.

22 Q. And what have been the penalties that have
23 resulted from those charges?

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1 A. Well, that's the subject of ongoing
2 arbitration. We have had some officers that
3 have accepted a penalty of suspension. We've
4 had some officers that have accepted a penalty
5 of a reprimand but ultimately the vast, vast,
6 vast majority of the offers -- so the way our
7 disciplinary process works is that if formal
8 charges are lodged, the commissioner of police
9 will sign charges. The member in question is
10 served with those charges by Internal Affairs.

11 We have to run what's called an informal
12 hearing within ten days of those charges being
13 returned back to us by the union. We run the
14 informal hearing where it's similar to in the
15 criminal world is a plea-bargain if you will.
16 An offer is conveyed to the member. They have
17 the choice of either accepting that offer or
18 not.

19 In the vast majority of those cases,
20 they have not accepted that offer at the
21 urging I believe of the union because that's
22 been the subject of ongoing arbitration. Of
23 all those cases, we have held one formal

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1 arbitration hearing where we actually went to
2 a formal hearing. The arbitrator found the
3 particular officer in question in violation of
4 the policy and issued a penalty of a formal
5 reprimand. We have, geez, I think maybe
6 around 60 give or take that are pending formal
7 arbitration and we have had many sessions in
8 front of an arbitrator trying to work through
9 the body camera policy, issues, discipline,
10 and so forth.

11 Q. And since you have began bringing departmental
12 charges against officers for violations of the
13 body worn camera policy, have instances of
14 violation of the policy reduced?

15 A. Oh, I think our -- how do I want to put this?
16 I think yes. I think the amount of
17 disciplinary cases has gone down at a pretty
18 decent rate since the beginning. You know, I
19 think the rollout of a program like this, and
20 you're going to see this nationwide, you know,
21 it takes time for that technology and there's
22 something called muscle memory, you know,
23 where the officer has to get used to

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1 activating those cameras. You know, that was
2 the initial, you know, issue in the beginning
3 but, yeah, we have gotten better.

4 Q. It sounds like the department takes adherence
5 to the body-worn camera policy pretty
6 seriously. Would you agree with that?

7 MS. FREELY: Objection to form.

8 A. I would agree with that.

9 Q. And why do you think it's important to enforce
10 the body-worn camera policy?

11 A. Number 1, it's policy. If we put out policy,
12 then you have to adhere to the policy. Number
13 2, it's transparency. You know, the -- far
14 and away, the vast majority of those videos
15 that are produced show that the officers are
16 acting in accordance with department policy.
17 There are very few instances that I've seen
18 where the body-worn cameras have shown or
19 produced or resulted in an officer violating
20 policy. Evidence gathering, obviously it's
21 extremely important in a criminal proceeding
22 to have that evidence, video evidence to be
23 able to show what happened so, you know, those

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1 cameras are extremely necessary.

2 You know, I think you go back years when
3 body-worn cameras were coming on the scene,
4 you know, the attitudes and the perceptions of
5 officers were that they did not want them.
6 And I think if you talk to a lot of officers
7 nowadays, the vast majority of officers are
8 happy to have them, want them, and want to
9 show the public what's actually occurring out
10 there.

11 Q. Do you think that officers are generally aware
12 that the body-worn camera policy is enforced?

13 MS. FREELY: Objection to form.

14 A. Yes.

15 Q. And do you think that results in greater
16 adherence to the policy?

17 A. I believe it has resulted in greater
18 adherence.

19 Q. We talked a little bit about this before, but
20 did George Floyd's death and the protest
21 movement that followed change policing in
22 Buffalo?

23 A. I mean, there were changes made to some

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1 academy so I don't -- I don't recall
2 specifically what that national organization
3 would be.

4 Q. And has such a training by a national
5 organization taken place while you were
6 commissioner?

7 A. No. Not by a national organization, no. I
8 brought in New York State on -- to update our
9 training academy on implicit bias, brought
10 in -- there was an update and a change to that
11 training so we got the training staff the
12 newest training on that. We had done implicit
13 bias in the past but, you know, really I think
14 the best person to do some of that
15 constitutional stop training is the DA's
16 office who are the ones that have to prosecute
17 cases and run suppression hearings or handle
18 suppression hearings.

19 Q. And how often does the DA's office provide
20 training on constitutional stops?

21 A. I don't know. I can't answer that question.
22 I don't know the last time that that would
23 have been done. You know, training is a

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1 of a criminal or a traffic or even a parking
2 adjudication.

3 Q. Do you recall making changes to the BPD's
4 tinted windows ticketing practices in 2020?

5 A. Making changes? No, not changes. I'm not
6 sure what you're referring to as -- well, I
7 guess I will wait for your next question.

8 Q. Well, something we observed is that tinted
9 windows ticketing decreased and -- well, let
10 me ask: Are you aware that around 2020
11 Buffalo Police Department officers started
12 issuing fewer tinted windows tickets?

13 A. Well, again, if you recall in 2020 we had
14 something called COVID which you will see that
15 all of our categories of tickets and traffic
16 stops significantly decreased, so that's one
17 of those years down the line that will have a
18 big asterisk next to it when it comes to
19 statistics for a lot of categories, not just
20 for policing but everything else in the world.

21 Q. But the BPD never issued any kind of guidance
22 or policy change that was directly concerning
23 tinted windows ticketing?

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1 A. A policy change, no. Tinted window tickets is
2 a violation of the New York State Vehicle and
3 Traffic Law. Officers have discretion on
4 whether or not they're going to issue a
5 summons to a particular motorist or not so
6 that's still to this day a violation of the
7 vehicle and traffic law.

8 MS. FREELY: I'd just like to note my
9 objection on the record to the previous
10 question. Thank you.

11 MS. WILNER: To what? I'm sorry; I
12 didn't hear that.

13 MS. FREELY: To the previous question.

14 Q. So if tinted windows ticketing decreased
15 after -- in response to COVID but then the
16 numbers stayed low, what would the reason --
17 what do you think would be the reason for
18 that?

19 MS. FREELY: Objection to form.

20 A. You're talking specifically tinted window
21 tickets?

22 Q. Yes.

23 A. I don't know. I mean, officers have the

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1 officer was out of procedure, out of line and
2 then we would conduct an internal
3 investigation on that.

4 MS. FREELY: Claudia, do you want to --
5 do you still have questions in this line of
6 questioning?

7 MS. WILNER: I do. I just have one or
8 two more questions and then we'll be ready to
9 take a break if you don't mind.

10 MS. FREELY: Okay. I am trying to go
11 off the record for a second. Peter just
12 walked in so we can switch off without taking
13 that break then.

14 Q. Have you ever brought anybody up on
15 departmental charges for not complying with
16 the core principles in the traffic enforcement
17 policy?

18 A. So the way you're asking the question, I think
19 we don't have a -- our rules and regulations
20 are pretty specific so, you know, there's a
21 rule that's charged typically when we have an
22 internal complaint called conduct. So we
23 don't have a rule and regulation that says you

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1 violated the core principles of MOP chapter
2 this section.

3 If there is a complaint that came in and
4 somebody complained of say rudeness or, you
5 know, how a particular encounter went down, if
6 it -- if the conduct was what we would believe
7 is not proper, we would bring a conduct charge
8 and then we would cite a statement of facts of
9 what that conduct was that we believe was a
10 violation of the officer's -- of the rules and
11 regulations. So we don't have a rule and
12 regulation that would be formally charged
13 stating core principles of chapter this and
14 subsection that.

15 Everything is very specific to a
16 situation, and then we would have to determine
17 whether or not it rose to the level of a
18 formal charge or if we believed that an
19 officer conducted a traffic stop and the core
20 principles weren't necessarily followed
21 because of, you know, some rude comments that
22 were made, that may open an Internal Affairs
23 investigation but it may only rise to the

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1 level of a conference based on a, you know,
2 prior history with the officer and being
3 addressed at that point. So my long-winded
4 answer is there is no rule and regulation
5 specifically stating core principles. It's
6 conduct or could be something else more in
7 depth.

8 Q. Okay. Thank you for that explanation.

9 A. It's a tough way to answer a question so...

10 Q. Okay. We can go ahead and take a five-minute
11 break now.

12 A. Great. Thank you.

13 MR. SAHASRABUDHE: Thanks.

14 (A recess was taken.)

15 BY MS. WILNER:

16 Q. So I'd like to talk a little bit about
17 conferences. This was something that came up
18 in our discussion just a few minutes ago. So
19 when a Internal Affairs complaint results in a
20 conference -- well, let me ask -- let me start
21 a different way.

22 Was it your role when you were a deputy
23 police commissioner to conduct conferences

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1 things of that nature.

2 Q. Was it your practice to keep notes or records
3 of the conference?

4 A. No. They were verbal discussions, and then
5 the only note would have been writing on the
6 file the date and the time that the conference
7 was held.

8 Q. And did you ever receive any training or
9 guidance on how to conduct a conference?

10 A. Just from the commissioner stating what -- you
11 know, what would occur in a conference, the
12 type of conversation that would be had.

13 Q. Meaning that the commissioner would tell you
14 what the conference should be about; is that
15 what you're saying?

16 A. Yeah, typically. Yeah, yeah, typically. The
17 first conference that I would have conducted
18 when I was a district chief at B District and
19 then Commissioner Derenda would have sent a
20 file to me to conduct the conference with an
21 officer.

22 Q. I see. So when you were the chief and you
23 were conducting conferences, you would have

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1 officer's disciplinary history in preparation
2 for a conference?

3 A. Not necessarily in preparation of the
4 conference. I would look at it but because
5 the determination has already been made by the
6 commissioner of police looking at the
7 disciplinary history to see if there was a
8 history of this. And if there was a history
9 of similar conduct, chances are it wouldn't be
10 at a conference; it would rise to the level of
11 a formal charge which takes it into a
12 different realm at that point.

13 Q. Would the officer's disciplinary history have
14 any impact on your understanding of what
15 occurred during the incident?

16 MR. SAHASRABUDHE: Objection to form.

17 A. I guess I'm not sure what you're -- can you
18 ask that again, be a little more descriptive?
19 Are you asking if their disciplinary history
20 determines why this is a conference or how the
21 conversation is going to go?

22 Q. Yeah, let's take the second question. Does
23 the -- did the officer's disciplinary history

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1 have any impact on how a conversation with you
2 would go?

3 A. Well, it gets to the level of a conference
4 because there probably is no prior history
5 related to that type of an offense, but we
6 also through, again, the collective bargaining
7 agreement and the disciplinary process within
8 our department which is contractual, we have
9 to mostly keep that conference specific to
10 that specific reason alone.

11 Getting into older history, older cases,
12 things that have already been adjudicated or
13 dismissed would be cause for the officer to go
14 back to the union, reopen the case, and then
15 an arbitrator can come back, and has come
16 back, and would say that you have to keep the
17 conference specific to that specific
18 complaint.

19 Q. Okay.

20 A. Because it's -- I don't want to use the term
21 but I'm going to use the term. You have to be
22 careful of a double jeopardy situation where
23 you're reopening something that's already been

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1 letting that district chief know and then
2 usually that district chief would then come in
3 and meet me. So we're not talking about a lot
4 of instances here, but the district chief
5 would be in the conference with me when those
6 times where they were conducted. There was
7 not a lot of those, but that would occur.

8 Q. Well, you testified earlier that the purpose
9 of a conference was really for training,
10 right?

11 A. Yes.

12 Q. And so you would be advising the officer of
13 how they should correct or improve their
14 behavior, right?

15 A. Based on the incident that occurred, yes.

16 Q. Would you then inform the officer's supervisor
17 of the corrections and improvements that
18 were -- that you as DPC thought were needed?

19 MR. SAHASRABUDHE: Form.

20 A. No, it needs to be addressed with the officer
21 directly.

22 Q. But then doesn't that leave the officer's
23 supervisors unaware of issues and unable to

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1 offer ongoing guidance and supervision around
2 those issues?

3 MR. SAHASRABUDHE: Objection to form.

4 A. The way these are laid out is that we conduct
5 a conference with the specific member of the
6 department.

7 You know, if it's for a car accident, we
8 address, you know, what driving habit led to
9 that particular situation, you know, short of
10 - I don't know if the officer is driving in a
11 reckless manner on a regular occasion and this
12 particular time they got in an accident, just
13 as much as I don't believe a -- having been a
14 district supervisor, a patrol supervisor for
15 five years, you know, if I saw something, if I
16 felt an officer was driving in a manner, I
17 would tell them at that time but we have to
18 address situations -- immediate supervisors
19 have to address situations if they see it at
20 the time.

21 So if I told a supervisor, hey, I
22 conferenced him for their driving, I mean, the
23 supervisor is going to know that they were

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1 involved in an accident; they were going to
2 know they were being brought in for a
3 conference. You know, that's how it was
4 addressed. Going back to the supervisor and
5 saying just so you know I told him -- you
6 know, this is what I told him, it's not going
7 to change their immediate supervision of
8 that -- of that person.

9 Q. What about the example of a complaint of
10 rudeness that results in a conference and
11 you're advising the officer about their
12 behavior, do you talk to the supervisor about
13 the rudeness that was discussed at the
14 conference?

15 A. Well, the supervisor is going to be aware that
16 a conference was being held with that officer,
17 but I would also fully expect any supervisor
18 in the police department that if they were at
19 a particular scene/situation and they
20 witnessed an officer being rude or going in a
21 direction that they were being rude, that they
22 would immediately address that. If it's not
23 in their presence, they're not going to know

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1 either; we would then find out by way of a
2 complaint so we can't be --

3 Q. Right.

4 A. -- everywhere every time to see every
5 situation. Those have to be addressed by the
6 on-scene supervisor if they see it.

7 Q. Yes, and I am talking about the specific
8 circumstance in which there is an Internal
9 Affairs complaint for rudeness and the
10 commissioner decides that that should be
11 resolved by a conference with you. You
12 conference the officer on their rudeness. Do
13 you then tell the lieutenant, hey, I just
14 spoke to Officer Smith about his rudeness; can
15 you keep an eye on him to make sure that he is
16 dealing with civilians and treating them with
17 respect?

18 A. No, I --

19 MR. SAHASRABUDHE: Form.

20 A. No, I don't because it's already expected that
21 the lieutenant, if they witness an officer in
22 their command being rude that they are going
23 to address that so it's -- it would almost be

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1 redundant. Address it with the officer or a
2 deputy commissioner or a chief would address
3 that with the officer and the lieutenants are
4 well aware of what's expected. And if the
5 lieutenant stood by and watched somebody, one
6 of their subordinates or any subordinate
7 within the police department, conducting
8 themselves in a manner, the lieutenant would
9 be brought in for a statement and be subject
10 to an Internal Affairs investigation so it
11 would almost be redundant to tell the
12 lieutenant that I talked to the officer about
13 a situation. Keep an eye on them, they're
14 supposed to. That's their nature of their job
15 as a supervisor is to watch out for the
16 members of their command. They can't watch
17 somebody when they're not directly there at a
18 situation. It's already expected of our
19 supervisors to do that.

20 Q. And what if the lieutenant wasn't there to
21 witness the incident, would you then inform
22 the lieutenant about it?

23 MR. SAHASRABUDHE: Form.

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1 A. I guess my question back to you is if a
2 lieutenant is not there to witness something,
3 how are they supposed to know something --
4 that the officer didn't conduct themselves in
5 a certain manner? So that would have to be
6 the citizen coming in and filing a complaint.

7 I think just common sense dictates that
8 I can't tell a supervisor to keep an eye out
9 for an officer when they're not there to
10 actually see what's happening. We have to
11 rely on citizen complaints to bring officers'
12 conduct to our attention. But if a supervisor
13 is at a situation, the full expectation is
14 that they will address that at that time or
15 shortly thereafter and handle it
16 appropriately. I can't expect a supervisor to
17 handle a situation if they're not there to be
18 a witness to it.

19 Q. So after you conducted a conference, and we're
20 going to stick with the example of the
21 conference for rudeness, would you do any kind
22 of follow up?

23 MR. SAHASRABUDHE: Form.

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1 A. A follow up after the conference?

2 Q. Yes.

3 A. No. The case is resolved.

4 Q. Did you have any systems in place to monitor
5 officers' conduct after a conference to see if
6 they were comporting with the guidance that
7 you gave them?

8 MR. SAHASRABUDHE: Form.

9 A. There is no system in place other than a
10 complaint coming in to address how an officer
11 conducts themselves. The body-worn cameras
12 are there so we can see the -- what previously
13 was unseen and it was a person-on-person
14 complaint, he said/she said is the common
15 term, but there's -- you know, there's no
16 system in place that can monitor what someone
17 is doing when nobody is watching.

18 Q. Okay. And I would like to take a look at some
19 conferences, some IAD files for conferences
20 that you conducted when you were the deputy
21 police commissioner. And I'm going to
22 start -- this is going to be Gramaglia 6, and
23 this is the IAD file of Deandre Green. And I

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1 certain things, sexual harassment, bloodborne
2 pathogens, PESH, those are mandatory so
3 sometimes we have to stop, detour, get into
4 these mandates before the year is up and
5 then go back to some of these other things and
6 then we hit other trainings. So I know there
7 was an aggressive push, I think it was 2019,
8 to get the department through that ABLE
9 training. I believe we got through a good
10 portion of it, at least the patrol force, but
11 I don't have the exact numbers.

12 Q. And how about the implicit bias training, how
13 many officers have taken the implicit bias
14 training?

15 A. I don't have --

16 MR. SAHASRABUDHE: Form. Go ahead.

17 A. Yeah, I don't have the number of that, but I
18 made that mandatory training departmentally.
19 And with those, we have five hours of New York
20 State mandated. Implicit bias is one of those
21 that must be done every year so I don't have
22 the exact numbers but we got through a
23 significant number of the department.

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1 Keep in mind, you're not going to have
2 everybody because you've got officers that
3 are -- that might be on leave, some might be
4 on long-term suspension, some are on a leave
5 of absence, some are on long-term injury or
6 sick leave so you're not going to get 100
7 percent of the department. There's people we
8 just are not going to be able to bring in for
9 training for other reasons.

10 Q. Okay. I'd like to move on and look at another
11 file. And actually while I'm calling it up,
12 for the implicit bias training, is that -- is
13 everybody required to take that training so
14 captains, chiefs, detectives, lieutenants, or
15 is it only for officers?

16 A. No, everybody.

17 Q. And this is going to be Gramaglia 8, and this
18 is the IAD file of Andre Wise. And this was a
19 complaint from October 2018, and this was
20 another one where you were directed to
21 conference the officers. The officers
22 involved were Shawn McCabe, Patrick McDonald,
23 and Lieutenant, how do you say his name,

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1 that authorization but, you know, you still
2 have to keep that in there for, you know, some
3 safety reasons. You know, there could
4 hypothetically be an escaped prisoner where
5 you have to set up traffic checkpoints. If
6 you could pull up the section of the language
7 and read it more specifically but, you know,
8 having something in there and the
9 authorizations that are required are two
10 different things.

11 Q. Okay. But under the MOP you could restart
12 those traffic safety checkpoints at any time,
13 right?

14 A. I'd have the authorization. I could, yes.

15 Q. Does the BPD conduct performance evaluations
16 of officers?

17 A. Contractually we're not able to, no. That's a
18 subject of union negotiations.

19 Q. Okay. And -- yeah, maybe I will come back to
20 that in a little bit. So aside from
21 performance evaluations, does the BPD evaluate
22 officers' performance in any way?

23 A. No. Subject to the union negotiations, we're

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1 not contractually allowed to do evaluations.

2 Q. Do you think that instituting performance
3 evaluations would promote better training and
4 supervision of officers?

5 MR. RUSS: Objection to form. You may
6 answer.

7 A. I do. We're -- it's no secret in the
8 department that we are trying to get that.

9 Q. And the performance evaluations are actually
10 required in order for the BPD to preserve its
11 accreditation, right?

12 A. So we have a waiver from New York State
13 because it's outside of our control.

14 Q. But the waiver was only for a certain period
15 of time, right, and the waiver will expire?

16 A. No, we would have to again apply. We maintain
17 that application for a waiver so we are still
18 accredited and we are in compliance with our
19 accreditation.

20 Q. The contract is under negotiation now?

21 A. Yeah, the -- the last agreed upon contract
22 expired June 30th of 2019. It went into
23 binding interest arbitration which was settled

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1 last year which was only two years so it
2 covered from July 1st of '19 to June 30th of
3 '21. So by the time it was settled, it was
4 already expired in itself so we are expired
5 again and moving towards arbitration again.

6 Q. Okay. And that particular arbitration that
7 results in pay raises for officers but no
8 performance evaluations, right?

9 A. Correct. That was the arbitrator's decision.

10 Q. Is the City currently seeking to get
11 performance evaluations during the new
12 contract and negotiations?

13 A. We did in the negotiation stage, but now that
14 we are at the mediation stage I don't know
15 what I'm allowed to discuss on mediation.
16 There's rules of mediation that, forgive me, I
17 don't know what we're allowed to discuss
18 because we're in mediation, but I will say
19 that when we were actively negotiating with
20 the union we were -- that was one of the
21 things that we put on the table is performance
22 evaluations.

23 Q. The city charter gives you as commissioner the

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1 power and duty to govern and discipline
2 officers, right?

3 A. Well, the contractual agreement and
4 contractual language sets forth the policy and
5 procedures of discipline. So whether or not I
6 could on my own invoke some form of
7 discipline, I will lose that to an arbitrator
8 and an arbitrator has all authority by
9 contract between the union and the City and
10 it's been that way for decades. I don't know
11 when that agreement was signed, but it goes
12 back a long way.

13 Q. So you believe that the collective bargaining
14 agreement supersedes any rights that you have
15 under the city charter to govern and
16 discipline officers?

17 MR. RUSS: Objection to form. You may
18 answer.

19 A. With relation to discipline, yes. There's
20 contractual language on how that process plays
21 out.

22 Q. Does the BPD have an early warning system to
23 identify officers who engage in problematic

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1 practices?

2 MR. RUSS: Objection to form. You may
3 answer.

4 A. We have a program that Internal Affairs uses
5 called IAPro. It has the ability to do it but
6 because of contractual limitations we are not
7 able to act upon any early intervention
8 system. That would have to be agreed upon,
9 negotiated with the union.

10 Q. And is that part of the negotiations that are
11 happening now with the new contract?

12 A. An early warning system, I don't recall or
13 believe that it was part of the initial
14 negotiations.

15 Q. And were those negotiations -- sorry. Did
16 this latest round of negotiations, did that
17 begin during your time as commissioner or was
18 that something that began under Lockwood and
19 that you continued?

20 A. Well, I will say which time? So I was only
21 remotely involved in one aspect of the
22 negotiations that led to the binding
23 arbitration and then ultimately the binding

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1 Q. Okay. Are you aware that the traffic stop
2 receipt data shows racial disparities in that
3 Black drivers are stopped more often than
4 White drivers?

5 MR. RUSS: Objection to form. You may
6 answer.

7 A. So I -- and this was covered in depth and even
8 not aired. You have to look at -- a lot
9 deeper into the data. Break it down by each
10 patrol district, you will see differences in
11 the data. And then what was not aired, what
12 was not put on anything is you're
13 automatically assuming that everybody that got
14 a stop receipt in a particular area lives
15 within that same census tract area.

16 You cannot -- and there are studies
17 showing that you should not, cannot use census
18 tract data compared and overlaid with traffic
19 stop data, traffic stop receipt data, summons
20 data for that census tract area unless you dug
21 into every single one of those stop receipts
22 or summonses and then looked to see exactly
23 where those individuals live. You're assuming

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1 that someone is only being stopped within the
2 census tract data tract that they live in.
3 There's a lot of variables that come into
4 place. And you're also assuming that someone
5 was not stopped for a valid reason. If
6 there's a valid reason, then by law we have
7 every ability to stop somebody.

8 Q. Okay. I'm looking at the situation of the
9 traffic stop receipt data.

10 A. I understand.

11 Q. And it shows that Black drivers are stopped
12 more often than White drivers based on what
13 your officers reported of the race of the
14 people stopped, and I'm asking is that
15 something that you're aware of?

16 MR. RUSS: Objection to form. You may
17 answer.

18 A. I think I did answer the question. I looked
19 at the --

20 Q. I am looking for a yes or no answer. Are you
21 aware of those disparities?

22 MR. RUSS: Objection to form. You may
23 answer.

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1 A. I'm aware of the data.

2 Q. And the fact that it shows a racial disparity?

3 MR. RUSS: Objection to form. You may
4 answer.

5 A. It depends on how you want to look at the
6 data; that's my answer.

7 Q. Are you aware that the data shows that Black
8 drivers are stopped more often than White
9 drivers?

10 MR. RUSS: Objection to form. You may
11 answer.

12 A. I've answered the question in numerous ways.

13 Q. Well, actually, you haven't asked -- you have
14 not directly answered that question.

15 A. I may not have answered it the way your --

16 MR. RUSS: He has answered it several
17 times.

18 A. I may not have answered it the way you want me
19 to answer it, but I've answered the question.
20 It's a deeper answer.

21 Q. Well, I'm not asking for an explanation of the
22 reason, your opinion of whether it's right or
23 wrong. I'm just asking if you're aware of the

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1 numbers.

2 MR. RUSS: Objection to form. You may
3 answer.

4 A. I am aware of the numbers, yes. I have not
5 looked at the numbers recently. I'm aware of
6 the numbers as of the last time I pulled them,
7 and I don't know when that was.

8 Q. And have you investigated the reasons for
9 those disparities?

10 A. I investigate complaints that come into
11 Internal Affairs. If there's no complaints,
12 then I have to assume that the reason for the
13 traffic stop was a valid reason and that the
14 motorist that was stopped, for whatever reason
15 that was, did not file a complaint. They must
16 have felt that there was a valid reason why
17 they were stopped as well.

18 And you have to remember not every
19 traffic stop ends up in a traffic stop
20 receipt. Some of those end with a traffic
21 summons being issued, and the racial data is
22 not collected on the traffic summons by New
23 York State. That's a New York State summons,

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1 not a City of Buffalo summons.

2 Q. Okay. And I'm still talking about traffic
3 stop receipts, and I asked whether you
4 investigated the reason for those disparities
5 and I understood the answer to that question
6 to be no; am I correct?

7 MR. RUSS: Objection to form. You may
8 answer.

9 A. Unless there's an Internal Affairs complaint
10 filed, then there is no investigation.

11 Q. Do you believe Black drivers commit more
12 traffic violations than White drivers?

13 MR. RUSS: Objection to form. You may
14 answer.

15 A. I have no data to suggest that.

16 Q. I do recall that when the WIVB reporter asked
17 you about traffic stop receipt disparities,
18 you said that the data was not looked at deep
19 enough and I heard you say that again today in
20 this deposition. Did you, yourself, ever do a
21 deeper look into the data that you said was
22 needed?

23 A. I didn't say it was needed. I told them that

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1 if they wanted to make certain allegations
2 that they should look deeper into that. I
3 have not done an analysis based on addresses
4 where people live and where they received a
5 summons or where they were stopped. I respond
6 to complaints, and I've explained the
7 disciplinary process. I've explained the
8 investigative process, the complaint process.

9 If somebody feels that they were
10 stopped -- and I've been on TV on this, in
11 that very interview. If somebody believes
12 that they were stopped for an invalid reason
13 or for reasons other than committing a traffic
14 offense or for reasonable suspicion based on
15 articulable facts that they are encouraged,
16 not even asked, they are encouraged to come in
17 and file a complaint and we will investigate
18 that. Our department has made significant
19 changes over the years with technology in the
20 advent of body cameras and that really helps,
21 you know, to investigate complaints and I
22 don't have complaints.

23 Q. Are you aware -- and now I'm going to move on

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1 Q. Well, now that you know that it is possible to
2 enter the race of the person ticketed into
3 TraCS, have you considered issuing a general
4 order requiring officers to collect and record
5 that information?

6 A. No. I don't control New York State TraCS
7 system to make that field open and a part of
8 the TraCS summons so my answer was no.

9 Q. Well, okay. And that's based on the fact that
10 you think that the -- I'm sorry, I don't
11 understand the reason. I didn't understand
12 that answer. You testified that you learned
13 that it is possible to enter race into TraCS,
14 correct?

15 A. I know that now, yes, that it is possible.

16 Q. Okay. And given that it is possible to enter
17 race into TraCS, have you considered ordering
18 your officers to enter the race of the person
19 ticketed into TraCS?

20 A. I did not issue a general order. No, I have
21 not considered it.

22 Q. Do you think it's important to be able to
23 identify racial disparities in the BPD's

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1 racial disparities in ticketing, and I would
2 like a yes or no answer.

3 A. It's a priority for me to investigate all
4 complaints of alleged misconduct or other
5 allegations, and I will investigate those
6 complaints but, you know, simply looking at
7 one dataset. Was the traffic stop for a valid
8 reason? If it was, then that's the end of the
9 conversation at that point for that traffic
10 stop. If a complaint is made, I can
11 investigate that complaint. I don't have any
12 complaints that I'm aware of for someone who
13 was pulled over and they felt that they were
14 improperly pulled over.

15 Q. Interestingly right in that WIVB interview
16 that you gave on TV they interviewed a person
17 who was a Black man who said that he was --
18 had been improperly pulled over because of his
19 race. Did you investigate that situation?

20 MR. RUSS: Objection to form. You may
21 answer.

22 A. Did he file a complaint with Internal Affairs?
23 I remember the story obviously. I just don't

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1 remember who the person was, what were they
2 written a summons for, or what were they
3 stopped for. Was that stop valid and legal?
4 That's what I have to look at, if the stop was
5 valid and legal.

6 Q. Well, did you ask Internal Affairs to open an
7 investigation of the racial profiling that was
8 alleged in that media interview?

9 A. I did not. The --

10 MR. RUSS: Objection to form. You may
11 answer.

12 A. The individual didn't come forward that I'm
13 aware of to Internal Affairs. And as part of
14 that media interview, I also said -- and I
15 don't know if it made it to air, but I also
16 said on several occasions that we encourage
17 people to come forward if they believe that
18 they were the subject of racial profiling, if
19 they believe that the stop was not valid. I
20 said that on numerous occasions in that
21 interview.

22 Q. Isn't the department required to investigate
23 allegations regardless of how they're

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1 received, even without -- even without a
2 formal complaint being filed by that
3 individual, here you have an individual saying
4 right on TV that they were stopped because of
5 their race, why not open an investigation on
6 that?

7 MR. RUSS: Objection to form. You may
8 answer.

9 A. Well, as you said, I respond to allegations.
10 If I have a complaint, if I have an
11 allegation, come forward and we will
12 investigate that. I need facts to move
13 forward with an investigation.

14 Q. Does the BPD have a written policy that
15 prohibits the use of racial slurs or racially
16 derogatory language by officers?

17 A. Yes, I think you read it earlier.

18 Q. I'm sorry, where did I -- where did I read
19 that earlier?

20 A. When we were looking over one of the
21 complaints, wasn't that in one of the sections
22 that you read? A section on profane language,
23 we had a discussion on that. I thought you

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1 read something -- or brought something up on
2 that before.

3 Q. So --

4 A. But, yes, we do have policies on that.

5 Q. Okay. So it would be the general policies
6 that prohibit profane language and require
7 courtesy and respect. Other than that, is
8 there anything specific -- specifically on
9 racially derogatory language?

10 A. I mean, there's sections on officers' conduct.

11 Q. And, again, those are -- those would be
12 general conduct but I'm wondering if there is
13 anything specific that you know of
14 specifically on the use of racially derogatory
15 language?

16 A. Yeah, it's in there. I just don't know
17 exactly where it is off the top of my head.
18 I'd have to pull it up.

19 Q. Are you familiar with signs posted on bulletin
20 boards in station houses that prohibit the use
21 of racial slurs or racial profiling?

22 A. No.

23 Q. And are there any such signs posted on

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1 significantly offended that that was purported
2 to be widespread in the normal course of
3 business.

4 Q. So did you ever do any investigation or
5 auditing to assess whether his testimony was
6 valid?

7 A. I don't know how I would conduct an
8 investigation other than asking everybody one
9 by one if you talk that way as a regular
10 course of your business. Again, I can only
11 operate on complaints that come in and I also
12 have every expectation that the supervision of
13 this police department and the officers that
14 work in this department that if they heard,
15 you know, any type of offensive language,
16 whatever it is, that they would -- they would
17 report it and act upon it.

18 MR. RUSS: And, Claudia, as you know,
19 that testimony came in a deposition which is
20 part of another lawsuit against Buffalo Police
21 Department and various individuals.

22 MS. WILNER: I'm not -- I'm only
23 aware -- I'm aware of what's happening in this

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1 question, and he will give his answer.

2 Q. And I think your answer on progressive
3 discipline was no, correct?

4 A. We do not have a disciplinary matrix, no.
5 That would have to be negotiated with the
6 union and for them to accept the discipline
7 that comes along with a particular case.
8 Otherwise, it goes to the arbitrator. They
9 don't have to accept any discipline. The
10 member is free to reject any discipline that
11 is offered by the commissioner of police at
12 which point it will go to a formal hearing or
13 go to disciplinary triage. If it cannot be
14 resolved at that level, then it goes to a
15 formal hearing and that could take a year,
16 that could take two years, it could take three
17 years.

18 Q. Since becoming commissioner, and setting aside
19 the Amber Beyer situation, have you brought
20 charges against any officers for using racial
21 slurs or racially derogatory language?

22 A. No, not that -- no. I don't believe so, no.
23 Nothing stuck out in my head.

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1 Q. Since becoming commissioner, have you handled
2 complaints of officers engaging in racial
3 profiling or racially biased policing?

4 A. No.

5 Q. And have you ever disciplined an officer for
6 engaging in racially biased policing?

7 A. I don't believe I've had any substantiated
8 complaints of that. You're saying outside of
9 the named member, or are you including the
10 named member Amber Beyer?

11 Q. Outside of -- outside of Amber Beyer.

12 A. Outside of Amber, no, I don't -- I don't
13 believe I've had any complaints come in in
14 that regard.

15 Q. Are you aware of instances in which the BPD
16 has received more than one complaint against
17 the same officer for racial discrimination?

18 A. Since becoming commissioner?

19 Q. Well, just generally are you aware of officers
20 that have multiple racial discrimination
21 complaints against them?

22 A. I mean, you've pointed out a few but outside
23 of that, I have not seen too much of those

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1 Q. So other than the formal IAD complaint
2 process, do you have any other systems that
3 are set up to alert you to multiple --
4 officers who have received multiple
5 complaints?

6 A. I don't have a system, but the Attorney
7 General of New York has a system in place
8 which I'm sure you're familiar with. If -- we
9 have to provide any member of the department
10 that has acquired five cases in a 24-month
11 time frame regardless of the outcome of those
12 cases, those complaints, whether they're
13 unfounded or sustained, any five within a
14 24-month time frame must be sent to the
15 attorney general. The captain in Internal
16 Affairs gathers those files, has a system in
17 place set forth by the attorney general and
18 sends those out and then the attorney general
19 opens up their own investigation.

20 Q. And when those alerts are sent to the attorney
21 general, do you get copies of them as well?

22 A. Copies of the files? We already have the
23 files in our possession. We're the ones

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1 discovery. Going on --

2 MR. RUSS: We can talk about it.

3 BY MS. WILNER:

4 Q. Since becoming commissioner, have you made
5 changes to the way the Internal Affairs
6 Division operates?

7 A. You mean by policy? No.

8 Q. And are you familiar with the quarterly IAPro
9 meetings?

10 A. Well, I'm aware of -- we have not conducted a
11 quarterly IAPro meeting; it's been quite some
12 time, you know. IAPro meetings were put into
13 place a long time ago for the purposes of what
14 you brought up as early intervention. We
15 can't act on that. We act on every individual
16 complaint as it comes in. So, you know, I
17 think outside of a quarterly meeting that I
18 can't take action on, I'm aware of every
19 complaint when it comes in and what the
20 investigative process is and we review those
21 mostly on a weekly basis --

22 Q. I see.

23 A. -- with Internal Affairs.

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1 IAPro alerts. I can't act on early
2 intervention.

3 Q. And so do the IAPro alerts go to the
4 lieutenants, captains, and chiefs?

5 A. I just answered that. We don't send out IAPro
6 alerts because we can't act on them.

7 Q. I see. And that's been -- you sent them
8 once -- at one time you did send them, but
9 then you stopped sending them prior to COVID
10 or?

11 A. I didn't send them. We had IAPro quarterly
12 meetings. I attended them when I was a
13 district chief. When I became deputy
14 commissioner, we had some. I felt they really
15 weren't productive when I went to them
16 because, as I said many times, we can't act --
17 we have to act on each individual complaint as
18 it comes in. I can't act in a generalization
19 to say I think you're trouble. There is no
20 mechanism in place in the contractual
21 agreements that I can act on somebody because
22 I believe that they are in trouble -- or they
23 are a trouble.

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1 Additionally, we have to look at the
2 complaints on the merits of the complaints and
3 where the investigation goes and what evidence
4 is produced. So, you know, you can't just
5 take into an assumption because a complaint is
6 made that an officer is in the wrong. If they
7 are in the wrong, we need the evidence to
8 substantiate that and we will take
9 disciplinary action if we have the evidence to
10 prove it.

11 Q. Are you familiar with major and minor
12 violations?

13 A. Well the term, yes.

14 Q. Would an allegation that an officer used a
15 racial slur be a major or a minor violation?

16 MR. RUSS: Objection to form. You may
17 answer.

18 A. I mean, we don't have a list of this is major,
19 this is minor. I think there's -- it's just
20 kind of known as major and minor violations.
21 So I -- there's no list where this is
22 considered. I would consider a major
23 violation not to and including but if there

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1 Q. No.

2 A. It was just traffic summonses?

3 Q. Correct.

4 A. I mean, I guess that would be up to a court to
5 determine whether or not there was a violation
6 there, but that's where the case ended at that
7 point.

8 Q. When you were looking at this case, did you
9 look at Officer Garry's disciplinary history?

10 A. I don't recall if I did or I didn't but,
11 again, looking back on it, I look at the facts
12 and circumstances of this case. Whatever is
13 in the prior history that is proven, just like
14 in a criminal case, you have to look at the
15 facts and circumstances of the case that is
16 before you right now. I can't find that an
17 officer violated policy on something because
18 of a past history of doing something. He has
19 to be or she has to be held accountable for
20 the actions of the case at hand in that
21 particular case.

22 Q. Okay. And so I am looking at Officer Garry's
23 disciplinary history which is part of the IAD,

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1 STATE OF NEW YORK)

2 COUNTY OF ERIE)

3
4 I, Carrie A. Fisher, Notary Public, in and
5 for the County of Erie, State of New York, do
6 hereby certify:

7 That the witness whose testimony appears
8 hereinbefore was, before the commencement of
9 their testimony, duly sworn to testify the
10 truth, the whole truth and nothing but the
11 truth; that said testimony was taken remotely
12 pursuant to notice at the time and place as
13 herein set forth; that said testimony was
14 taken down by me and thereafter transcribed
15 into typewriting, and I hereby certify the
16 foregoing testimony is a full, true and
17 correct transcription of my shorthand notes so
18 taken.

19 I further certify that I am neither counsel
20 for nor related to any party to said action,
21 nor in anyway interested in the outcome
22 thereof.

23 IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed my seal this
11th day of October, 2023.

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Carrie A. Fisher
Notary Public - State of New York
No. 01FI6240227
Qualified in Erie County
My commission expires 5/02/27

DEPAOLO CROSBY REPORTING SERVICES, INC.

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